IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1898 OF 1986

RAZEL GOMES & ORS. ... PLAINTIFFS.

VS.

MILIND KEDAR KOTKAR& ANR. ... DEFENDANTS.

MILIND SHINDE I/B. GHANEKAR & CO. FOR THE PLAINTIFFS.

NONE FOR THE DEFENDANTS.

CORAM : S.K.Shah, J.
DATE : March 16, 2006

P.C. :

1. The Suit is undefended against both the defendants. The defendant No. 2 is the proprietary concern of the defendant NO.1. The suit is for specific performance of the Suit agreement, dated 19th September, 1982 [Exhibit'B' to the plaint] for handing over the possession of the Flat No. 4, on the first floor of the building constructed under the agreement to the Plaintiffs.

2. The Plaintiffs have filed affidavit of evidence as also the compilation of the documents. By the aforesaid Suit agreement, dated 19th September, 82, there was an agreement between the Plaintiffs and the defendant for development of the Plaintiffs property, giving rights to the defendants to construct the building thereon. Under the said agreement, the defendant had agreed to give to the Plaintiffs two flats, each admeasuring 500 square feet, without any consideration. Accordingly, the defendants have

constructed the building. The defendants also put the Plaintiffs in possession of flat No. 3 of the constructed building, however, failed to put the plaintiffs in possession of flat No. 4. It is alleged that the defendants had demanded consideration for the same. Therefore, the Plaintiffs have filed this suit for specific performance of the Suit agreement.

3. In terms of the agreement, as contained in term No. 1, whereby the defendants agreed to put the plaintiffs in possession of two flats, the value of which was worked out and agreed by the parties hereto at Rs. 90,000/- and it has also been specifically mentioned in the agreement that the plaintiff shall not be bound or liable to pay to the defendants any separate price consideration over and above the agreed cost of the said flats or any part thereof as the said amount was to be adjusted towards the consideration of development agreement.

4. The contentions raised in the plaint are proved not only by the terms of the agreement but also by affidavit filed by the plaintiff to prove the claim. As such the plaintiffs are entitled to the decree as prayed.

5. During the pendency of the Suit, by Order dated 1.12.1986, passed in Notice of Motion No. 1650 of 1986 in this Suit, it was directed that on Plaintiff

depositing a sum of Rs. 30000/- in Court, Court Receiver shall put the plaintiff in possession of the said flats, without any security and without any royalty but subject to the Plaintiffs agreeing to pay outgoings and subject to the plaintiffs agreeing not to induct any third party in the Suit premises and part with possession thereof. The learned Counsel for the Plaintiffs states that pursuant to the said Order, the Plaintiffs have deposited Rs. 30000/- in Court and the Receiver had handed over the possession of the Flat NO. 4 to the Plaintiff. He is in possession of the Flat No. 4 as also flat No.3 as per the agreement. Hence, the Order :-

ORDER

(1) The Suit is decreed with costs in terms of prayer clause (a) and (b).

(2) The Court Receiver shall stand discharged subject to payment of the costs of the Receiver.

(3) An amount of Rs. 30000/- deposited by the Plaintiff shall be refunded to the Plaintiffs alongwith accruals, by issuing a cheque in favour of the Plaintiff No. 3(a), as requested by the Plaintiffs Counsel.

(4) A decree be drawn up accordingly.

(5) Prothonotary to act on a Certified copy of

this Order.

[S.K.Shah, J.]